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U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

September 24, 2001

Docket Management Facility
U.S. Department of Transportation
Room PL-401
400 Seventh Street, S.W.
Washington, D.C. 20590

01 SEP 26 11:13:05
FEDERAL DEPARTMENT OF TRANSPORTATION

Re: Docket No. FMCSA-2001-9800 - 43

Dear Sir or Madam:

This is in response to the Department of Transportation's (DOT)/Federal Motor Carrier Safety Administration's (FMCSA) recent publication of its proposal to issue exemptions to certain insulin-using diabetic drivers of commercial motor vehicles from the diabetes mellitus prohibitions contained in the Federal Motor Carrier Safety Regulations. See 66 Fed. Reg. 39548 (7/31/01). The U.S. Equal Employment Opportunity Commission (EEOC or Commission), as the agency responsible for enforcing Title I of the Americans with Disabilities Act (ADA), has a longstanding interest in this prohibition due to its impact on the employment opportunities of individuals with insulin-treated diabetes mellitus (ITDM). In addition, as the lead federal agency for coordinating federal laws impacting equal employment opportunity, we have an interest in the implementation of policies and procedures that may affect EEO issues. See Executive Order 12067, 43 Fed. Reg. 28, 967,69 (July 5, 1978).

The proposed exemption program is intended to increase employment opportunities in transportation for individuals with disabilities while also monitoring safety. The exemption process is consistent with the ADA in providing for an individualized assessment of each applicant's ability to perform safely. For example, the protocol provides that each applicant have a complete examination by a board-certified endocrinologist familiar with the applicant's overall medical history, insulin use, and diabetes management for the preceding five years, as well as an examination by an ophthalmologist. Additionally, the exemption program requires a stringent protocol for controlling and maintaining appropriate blood glucose levels and for yearly monitoring by an endocrinologist. Applicants would be required to collect records of daily glucose measurements taken with a device with memory; these records would be reviewed quarterly by a specialist.

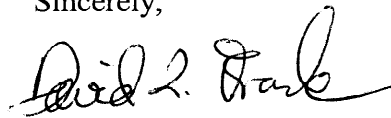
The Commission, however, has concerns about one aspect of the program – the requirement that an applicant must show evidence of having operated a CMV with a diabetic condition controlled by the use of insulin for the three-year period immediately preceding the application. We are

concerned that such a requirement may exclude a great number of drivers who are unable to attain this level of driving experience. Since so much professional truck driving requires the authority to operate a CMV in interstate commerce, individuals with ITDM are limited in the driving opportunities available to them. Drivers not licensed to operate a CMV in interstate commerce may be limited to a small number of relatively low-paying jobs, involving smaller vehicles on shorter routes. Some of these drivers may live in states that offer no opportunities to operate CMVs in intrastate commerce. Thus it is possible that very few drivers with ITDM will be able to take advantage of the exemption program.

Should FMCSA institute the three-year experience requirement, we would urge that it closely monitor its effect in relation to the other requirements of the exemption program. If very few drivers can actually meet the requirement, then we would urge FMCSA to reassess it. FMCSA should also consider a sunset provision to provide for a future reexamination of the effects of the three-year requirement. We ask that FMCSA bear in mind that there are already numerous other requirements under the exemption program that provide for safety and that do not exclude drivers who have had limited employment opportunities.

If you have any further questions or would like to discuss this matter, please feel free to call Peggy Mastroianni, Associate Legal Counsel, at (202) 663-4609, or Carol Miaskoff, Assistant Legal Counsel, at (202) 663-4689.

Sincerely,

A handwritten signature in dark ink, appearing to read "David L. Frank", with a stylized, flowing script.

David L. Frank
Legal Counsel